IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1421 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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REMI METALS GUJARAT LIMITED

Versus

ESSAR STEEL LIMITED

Appearance:

MR MITUL K SHELAT for Petitioners.

MR RC KAKKAD for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 09/09/2002

ORAL JUDGEMENT

Heard the learned advocates appearing for both the parties. This Civil Revision Application is filed against the judgment and order dated 12.10.2001 passed by the 2nd Joint Civil Judge (SD), Surat in application below Exh. 15 in Special Civil Suit No. 165 of 2001. By the said order, the learned Judge has dismissed the application moved by the present petitioner for dismissal

of the suit filed by the present respondent on the ground that the company is a sick industrial unit and by virtue of the provisions contained in Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, no suit for the recovery of money could be filed against the applicant company except with the permission of BIFR. The date of the suit transaction or the due date of payment had no relevance with the protection provided by the Act and immediately upon the filing of the reference all such legal proceedings would not be maintainable against the company. It is this order which is under challenge before this Court in the present Civil Revision Application.

2. It has been contended by Mr. Shelat, ld. advocate appearing for the applicant-revisionist that the petitioner company filed a reference to the Board for Industrial and Financial Reconstruction under Sec. 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 for determination of measures to be adopted with respect to the company on 23.4.1999. The said reference was registered as Case No. 111/1999. The BIFR after conducting the inquiry was satisfied about the sickness of the company and consequently the company was declared to be a sick company in terms of Section 3(1)(o) of the Act. The Board appointed Industrial Development Bank of India as the operating agency under Section 17(3) to examine the viability of the company and formulate a rehabilitation scheme for its revival.

3. After the abovesaid order, the present respondent has filed Special Civil Suit No. 165 of 2001 in the Court of Civil Judge (SD), Surat, on 11.4.2001 praying for a decree for an amount of Rs. 17,18,960.70 with 24% interest per annum. On receipt of the summons of the suit, the present applicants had filed an application Exh. 15 under Sec. 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 contending that the suit filed by the plaintiff-company was a suit for recovery of money which was filed on 16.4.2001, that is subsequent to the company having been declared as a sick unit under the said Act. It has been further contended that Sec. 22 of the said Act imposes a ban upon maintainability of a suit for recovery of money against the sick industrial undertaking except with the prior consent of the BIFR. Since the plaintiff company had admittedly not obtained the consent of BIFR prior to filing of the suit the suit is not maintainable and hence it is required to be dismissed. Since the ld. Judge has committed an error in not entertaining the applicants' application the impugned order is required to be reversed and the suit

which is filed by the plaintiff against the defendant is required to be dismissed.

4. Mr. RC. Kakkad, ld. advocate appearing for the respondent has submitted that there is no question of obtaining permission from BIFR as the respondent's name was not mentioned in the list of creditors of the company and the respondent was not aware about the company having been declared a sick unit and in that view of the matter the suit is maintainable and the learned Judge has rightly rejected the application moved by the applicants.

5. Both the parties had cited certain authorities in support of their respective contentions. Mr. Shelat has relied on the decisions in (1) AIR 1988 Guj. 213; (2) 1993 [2] SCC 144; and (3) AIR 2000 S.C. 2553. On the other hand, Mr. Kakkad has relied on the decisions in (1) AIR S.C. 2064; (2) 1992 (1) GLH 95; (3) 1997 (1) GLR 224; and AIR 1973 S.C. 76. After having heard the learned advocates appearing for the respective parties and after considering the above authorities, I am of the view that the learned Judge is not justified in dismissing the applicant's application for dismissal of the suit. However, looking to the provisions contained in the Act, the suit which is filed by the present respondent is required to be stayed till the proceedings before BFIR are over or the present respondent may obtain the permission from BIFR to proceed with the suit and till this would happen the suit is not allowed to be proceeded with.

6. In view of the above facts and the finding arrived at by me, the present Civil Revision Application is allowed to the extent that the Special Civil Suit No. 165 of 2001 pending in the court of Civil Judge (SD), Surat is stayed till the proceedings before BIFR are over or till the present respondent original-plaintiff in the suit obtains permission from BIFR to proceed with the suit.

7. With the above observations, the present Civil Revision Application is partly allowed. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]